

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ELIJAH M. FORD,

Plaintiff,

v.

MICHAEL C. KENNERLY, et al.,

Defendants.

Case No. 1:16-cv-243

HON. JANET T. NEFF

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OPINION AND ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. Defendants filed motions for summary judgment, arguing that Plaintiff failed to exhaust his administrative remedies (ECF Nos. 57 and 82). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R), recommending that Defendants' motions both be granted (ECF No. 96). The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.¹

¹The Magistrate Judge noted in the March 21, 2017 Report and Recommendation that Plaintiff's deliberate indifference claims were then unresolved. On April 12, 2017, however, this Court dismissed all deliberate indifference claims (ECF No. 97). Therefore, this Court's Opinion and Order concerns only the remaining equal protection claim against Defendant Wilson and the retaliation claims against Defendants Wilson, Murry, Moul, Vankamman, Bowerman (Bourman), Wood (Woods), Shroad, Harris, Zwolensky, Day and Nevins.

Plaintiff argues that the Magistrate Judge erred in determining that he did not exhaust his administrative remedies (Pl. Obj., ECF No. 98 at PageID.1315). Plaintiff opines that he “properly utilized the prisons grievance system” (*id.*). However, Plaintiff fails to identify any error in the Magistrate Judge’s conclusion that he has not exhausted his administrative remedies regarding the present claims. Accordingly, this Court adopts the Magistrate Judge’s Report and Recommendation as the Opinion of this Court and dismisses these claims without prejudice. Because this Opinion and Order resolves the remaining claims in this case, a Judgment will also be entered. *See* FED. R. CIV. P. 58. Because this action was filed in forma pauperis, this Court also certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of the Judgment would not be taken in good faith. *See McGore v. Wigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211-12 (2007). Therefore:

IT IS HEREBY ORDERED that the Objections (ECF No. 98) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 96) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Defendants’ Motion for Summary Judgment (ECF No. 57) is GRANTED.

IT IS FURTHER ORDERED that Defendant’s Motion for Summary Judgment (ECF No. 82) is GRANTED.

IT IS FURTHER ORDERED that this Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of the Judgment would not be taken in good faith.

Dated: November 14, 2017

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge